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WP (MD) No. 9324 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 23.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

W.P.(MD)No.9324 of 2010
and
M.P.(MD)Nos.1 & 2 of 2010

K.Dominic

: Petitioner

Vs.

1.The Assistant Executive Engineer,
Tamil Nadu Electricity Board,
Tuticorin Electricity Distribution
Circle Town (North),
Tuticorin.

2.The Superintendent Engineer,
Tamil Nadu Electricity Board,
Tuticorin Electricity Distribution
Circle Town (North),
Tuticorin.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of Writ of Certiorari calling for the records pertaining to the proceedings in Letter No.2/Executive Engineer/Distribution/N/North/Tuticorin/Ko.Theft of Energy A. 963/10, dated 13.07.2010 and quash the same.

For Petitioner : Mr.N.L.Rajah,
Senior Counsel
for Mr.S.Alagusundar

For Respondent : Mr.S.Dheenadhayalan



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ORDER

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This writ petition is filed as against the impugned assessment order passed by the Assistant Executive Engineer in Letter No.2 / Executive Engineer / Distribution / N / North / Tuticorin / Ko.Theft of Energy A.963/10, dated 13.07.2010, in and by which, the petitioner was directed to pay a sum of Rs.26,28, 891/- for the theft of 2,72,348 units of electricity.

2. Learned Senior Counsel for the petitioner submitted that the petitioner is running a factory named as "CIBIC ICE" at Tuticorin. On 22.06.2010 there was an inspection by anti-power theft squad wing in the petitioner's factory of Tirunelveli region, however, no infirmity in the metre was found by the said wing. Again on 13.07.2012, there was another inspection by the same squad and they recorded that there was a theft of energy as contemplated under section 135(1) of the Electricity Act, 2003 (hereinafter referred to as "the Act") and warned the petitioner of criminal prosecution. He further submitted that when no infirmity was found during the inspection on 22.06.2010, it is surprise to note that the respondent board made another inspection on 13.07. 2010 and found the theft of electricity. However, in view of the warning raised by the respondent, the petitioner proposed to compound the offence under Section 152(1) of the Act by paying a sum of Rs.5,10,000/- on the same day itself and accordingly, he has also paid the



amount. However, the first respondent issued the impugned assessment notice on the very same day demanding the petitioner to pay a sum of Rs. 26,28,891/-.

3. Learned Senior Counsel further submitted that only the Special Court has the jurisdiction to determine the civil liability of the consumer under Section 154(5) of the Act. According to him, the Special Courts are constituted under Section 153 of the Act and the Special Courts alone are empowered to try offences under Sections 135 to 139 of the Act. The Special Courts should also determine the civil liability against the consumer in terms of money for the theft of energy as per Section 154(5) of the Act and the respondent cannot usurp the power of determination of civil liability arising out of theft of energy. The civil liability is also defined as loss of damage incurred by the licensee for theft of energy. Therefore, the civil liability, if any, can be decided by the Special Court, viz., Principal District and Sessions Court, Tuticorin, notified under the Act.

4. Learned Standing Counsel for the respondent Electricity Board submitted that the first inspection made on 22.06.2010 was not a full-fledged inspection and therefore, another inspection was made on 13.07.2010. During the inspection, it was found that the petitioner, by removing the clamps which were mounted in the meter box, without tampering the seals provided in the chamber box, put up an electronic setup inside the coil



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of the chamber box, so as to control the consumption recorded in the metre. The same setup is operated through remote control, whereby the petitioner can stop the proper recording of the metre and it is possible that when the inspection made on 22.06.2010 the petitioner might have used the remote control to hide the theft of electricity. The petitioner has also accepted the theft of electricity and paid for compounding the charges. Since the petitioner has accepted the theft of energy and paid the compounding amount under Section 152 of Electricity Act, there is no occasion for the Special Court either to try the criminal or civil proceedings. The assessment order provided to the petitioner was only a provisional assessment order and by that order, the petitioner was only called upon to attend the personal hearing, but the petitioner approached this court without resorting to the available remedy. He further submitted that in pursuance of the interim order passed by this Court dated 29.09.2010, the petitioner has paid a sum of Rs.10,00,000/- and the respondents have also restored the electricity service connection.

5. This Court considered the rival submissions made and perused the material placed on record.

6. The petitioner is running an ice factory at Tuticorin and has also availed an electric service connection with a load of 99HP (85HP). The flying squad from the



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respondent department made surprise inspection in petitioner's ice factory on 13.07.2012 and found there was a theft of energy as contemplated under section 135(1). The offence of theft of electricity is compoundable under section 152 of Electricity Act, 2003 and this petitioner, by paying a sum of Rs.5,10,000/- on the date of inspection has compounded the offence. Thereafter the first respondent has also raised a demand for a sum of Rs.26,28,891/- under Section 126 of the Act. This, according to the petitioner, is a civil liability which can be enforced only through a Special Civil Court which is competent to try the offences under the Act.

7. If the assessing officer, on an inspection of any place, comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person under Section 126 of the Act. The department in this case has taken a specific stand that the impugned order is only a provisional order under Section 126 of the Act. The assessment made under Section 126 of the Act has nothing to do with Sections 135 and 152 of the Act. The compounding of offence by paying a sum of Rs.5,10,000/- by the petitioner for the offence committed by him under Section 135 has nothing to do with the assessment made by the assessing officer under Section 126 of the Act. The petitioner is having a right of submitting his objection to this provisional assessment as per Section 126(3) of the Act and the assessing officer, after affording



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reasonable opportunity of hearing to the petitioner, shall pass final order of assessment.

Therefore, there is no reason to interfere with this impugned order at this stage, since it is only a provisional assessment made by the assessing officer for which this petitioner has a right of objection and right of personal hearing before the assessing officer.

8. Therefore, this writ petition is dismissed with a liberty to the petitioner to raise his objection and the assessing officer shall decide the further course of action by following the procedure contemplated under Clause 23(AA) of the Tamil Nadu Electricity Supply Code, 2004. In this case the petitioner has already deposited a sum of Rs.10,00,000/- pursuant to the interim order passed by this Court and therefore the assessing officer shall proceed with final order without insisting for any further deposit of amount. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes
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To

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B.PUGALENDHI, J.

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